



MYRTLE BEACH POLICE DEPARTMENT

ADMINISTRATION REGULATIONS AND OPERATING PROCEDURES

Subject: Professional Stops

Number: 229-C

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Rescinds: 229 – Professional Traffic Stops

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229-A – Professional Stops

08-01-2013

229-B – Professional Stops

08-04-2015

270-A – Professional Enforcement

01-01-2015

Approved By:

I. PURPOSE

This Procedure is intended to reaffirm this department's commitment to fair and impartial policing, to clarify the circumstances in which officers can consider race/ethnicity when making law enforcement decisions, and to reinforce procedures that serve to ensure the public that we are providing service and enforcing laws in an equitable way.

II. DISCUSSION

A fundamental right guaranteed by the Constitution of the United States to all who live in this nation is the right to equal protection under the law. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents. Citizens are free to walk and drive our streets, highways and other public places without police interference so long as they obey the law. They also are entitled to be free from crime, and from the depredations of criminals, and to drive and walk our public ways safe from the actions of reckless and careless drivers.

The City of Myrtle Beach affirms its commitment to ensuring that its law enforcement agencies conduct their law enforcement activities in an unbiased manner. Biased practices are unfair, promote mistrust of law enforcement, and perpetuate negative and harmful stereotypes. Moreover, and vitally important, biased practices are ineffective police work. Law enforcement practices that are free from inappropriate considerations, by contrast, strengthen trust in law enforcement agencies and foster collaborative efforts between law enforcement and communities to fight crime and keep the communities safe.

Even-handed law enforcement is therefore central to the integrity, legitimacy, and efficacy of all law enforcement activities. The highest standards can and should be met across all such activities. Doing so will not hinder and, indeed, will bolster the performance of the City's law enforcement agency's responsibilities.

This law enforcement agency is charged with protecting the rights from the U.S. and South Carolina Constitutions for all, regardless of race, color, ethnicity, sex, sexual orientation, physical handicap, religion or other belief system.

Officers shall not consider race/ethnicity or other listed factors in carrying out law enforcement activities except when credible, locally relevant information links a person or people of a specific race/ethnicity to a specific unlawful incident (s), criminal patterns or schemes. This restriction on the use of race/ethnicity does not apply to law enforcement activities designed to strengthen the department's relationship with its diverse communities.

Because of the nature of their business, law enforcement officers are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that keeps our citizens free from crime, our streets and highways safe to drive upon, and that detects and apprehends criminals.

It is the philosophy of this department to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit an infraction of the law.

This regulation is intended to assist law enforcement in accomplishing this total mission in a way that respects the dignity of all persons and yet sends a strong deterrent message to actual and potential lawbreakers that if they break the law, they are likely to encounter the police.

III. DEFINITIONS

- A. Racial Profiling -- The detention, interdiction, or other disparate treatment of any person on the basis of their racial or ethnic status or characteristics.
- B. Reasonable Suspicion -- In *Ornelas v. U.S.*, 517 U.S. 690 (includes quoting of case law from previous cases in this decision), the Court noted "articulating precisely what "reasonable suspicion" and "probable cause" mean is not possible. These are commonsense, technical conceptions that deal with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." "We have cautioned that these two legal principles are not "finely-tuned standards", comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. They are instead fluid concepts that take their substantive content

from the particular contexts in which the standards are being assessed.” The Court stated that “each case is to be decided on its own facts and circumstances”. “The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.”

IV. Training Requirements

- A. Officers will receive initial and in-service training in proactive enforcement tactics, including training in officer safety, courtesy, cultural diversity, laws governing search and seizure, traffic stops, discrimination, community support, and interpersonal communication skills. Training will emphasize the need to respect the rights of all citizens to be free from unreasonable government intrusion or police action.
- B. Officers will receive initial and ongoing training which will include the legal rights of bystanders recording officers in an official capacity. In addition, training will be provided to all sworn personnel familiarizing them with bias -based enforcement issues.
- C. An individual employee will receive remedial training regarding bias -based profiling issues when a need is perceived and at the request of a supervisor. This training will be designed to increase the employee's awareness of profiling issues and to correct the employee's job performance. Remedial training will be documented and used in conjunction with the disciplinary system, if needed.

V. Procedure

- A. The department's efforts will be directed toward assigning officers to those areas where there is the highest likelihood that crashes will be reduced and/or crimes prevented through proactive patrol.
- B. Traffic enforcement will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.
- C. Motorists and pedestrians shall only be subjected to stops, seizures or detentions upon reasonable suspicion that they have committed, are committing, or are about to commit a crime or infraction. Each time a motorist or pedestrian is stopped, the officer shall notify the dispatcher via radio or vehicle laptop of the location of the stop, the description of the pedestrian or driver of the vehicle being detained and the reason for the stop. This information shall be logged in the CAD.

D. The department recognizes that with experience, individual officers may develop individualized approaches that they find work best for them in minimizing conflict during officer / violator contacts.

1. In an effort to prevent inappropriate perceptions of biased law enforcement, it is recommended officers follow the process below when conducting unknown risk pedestrian and vehicle stops:
 - a. Upon detection of a vehicle which an officer intends to stop for a traffic violation the officer shall immediately notify dispatch of his / her intention to stop the vehicle and provide the following information to the dispatcher:
 - i. Location of the traffic stop;
 - ii. Vehicle license plate number;
 - iii. Description of the vehicle to be stopped;
 - iv. Number of occupants inside the vehicle;
 - v. Description of occupants, to include race/sex if known.
 - b. Upon approaching the pedestrian or vehicle, the officer should introduce him/herself to the person (name and agency affiliation) and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety. In vehicle stops, the officer shall provide this information before asking the driver for license and registration. Politely ask for identification and any required documents. Example: "May I please see your license, registration and proof of insurance?"
 - c. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays.
 - d. Answer any questions the citizen may have, including explaining options for traffic citation dispositions, if relevant. It may defuse tension to ask a motorist if there was some reason for the violation. This gives them the opportunity to "have their say", often leads to an admission that the violator realized they were in violation, and precludes a defendant from offering a different excuse at trial. If you choose not to ask but the motorist wishes to give a reason or excuse, listen politely and give them ample opportunity to tell their story.
 - e. Provide name and call number when requested.
 - f. Apologize for the inconvenience or delay and/or explain if it is determined that the reasonable suspicion was unfounded after an investigatory stop.

- g. Give an appropriate closing. For example, if the motorist was cooperative, "Thank you for your cooperation" may be in order. Do not use the trite expression, "Have a nice day", which would be inappropriate in these circumstances. "Please drive carefully, your safety is important to us" is more appropriate.
2. A high-risk traffic stop will be conducted when an officer is confronted with stopping a suspected armed subject, violent criminal, fleeing suspect, etc., where the officer reasonably believes a higher level of protection is needed. The following procedure will be used to make a high-risk traffic stop:
- a. Choose the location carefully to avoid curves, hill crests, intersections and poorly lit areas, when possible. Consider locations where adequate cover is available.
 - b. Inform dispatch of the vehicle license number and state, direction of travel and stop location prior to initiating the contact. If no license number is available, the officer will provide a description of the vehicle and occupant(s).
 - c. Request backup unit(s) and, when possible, wait for the arrival of backup unit(s) prior to initiating the stop.
 - d. Activate the emergency lights and siren to alert the driver to stop.
 - e. Position the patrol car approximately twenty-five feet behind the stopped vehicle. The vehicle should be positioned at a 45-degree angle to the left to provide cover for the officer. If two officers are in the vehicle, one officer should take cover behind the rear of the patrol vehicle while the other takes cover in the apex of the driver's door.
 - f. The first backup unit to arrive will position itself to the right of the stopping patrol car, if possible. The second backup unit will position itself to the left of the stopping patrol car, if possible. Officers must not place themselves in the line of fire of the other officers on the scene.
 - g. The contact officer will give all commands to the occupant(s) of the stopped vehicle. The first backup officer to arrive on scene will assume all radio communications.
 - h. Officers will position themselves in the apex of the patrol car doors, staying low for cover, with weapons drawn and aimed at the occupant(s) of the stopped vehicle.
 - i. At night all police vehicles will aim their spotlights at the stopped vehicle to provide maximum illumination of the vehicle and its occupant(s).
 - j. The contact officer will verbally give challenge and orders to the occupant(s) of the stopped vehicle to extract and control the occupants. The contact officer may relinquish their duties to another officer when needed, but there should only be one officer giving commands at one time.

- k. Once all occupant(s) and the suspect vehicle has been cleared, an officer will notify the communications center that the scene is secure and the suspects are in custody.
- E. Appropriate enforcement action should always be completed, generally in the form of a warning, citation or arrest. The proper form must be filled out when necessary by the officers, and shall include the gender, race or ethnicity of the person stopped, if this information can reasonably be ascertained by physical appearance or from the driver's license or other documents provided by the individual.
- F. No motorist, once cited or warned, shall be detained beyond the point where there exists no reasonable suspicion of further criminal activity, and no person or vehicle shall be searched in the absence of a warrant, a legally recognized exception to the warrant requirement or the person's voluntary consent. In each case where a search is conducted, this information shall be recorded, including the legal basis for the search and the results thereof. This may be via detailed notes entered into the CAD call for service report, or incident report, whichever is appropriate for the specific incident. It is strongly recommended that consent searches only be conducted with written consent, using the proper department form. If the individual indicates that they will consent to a search but are refusing to sign the form, fill out the form anyway and indicate "consented to search but refused to sign", inserting initials and the signature of any witness in the signature block.
- G. If the police cruiser is equipped with a video camera, the video and sound from the in-car camera and BWC shall be activated prior to the stop, in part to be able record the behavior of the vehicle or person, and shall remain activated until the person is released and resumes their journey.
- H. In the absence of a specific, credible report containing a physical description, a person's race, ethnicity, gender or sexual orientation or any combination of these shall not be a factor in determining probable cause for an arrest or reasonable suspicion for a stop.
- I. The deliberate recording of any misleading information related to the actual or perceived race, ethnicity, gender or sexual orientation of a person stopped for investigative or enforcement purposes is prohibited and a cause for disciplinary action up to and including dismissal.
- J. A bystander has the right under the First Amendment to observe and record officers in the public during their course of duties, which include public areas; such as, parks, sidewalks, and streets. The bystander also has the right to carry out recording in one's home or place of business; such as a common area in a public or private setting, if the bystander has the legal right to be present. The bystander is not permitted to use a recording device and cross a police line, or an area that is deemed to be a crime scene.

Officers shall not instruct a bystander to cease recording if they are in a legal area and are not interfering or hindering the officer in the performance of his/her duties. Officers shall not detain a bystander for recording or inquire as to why he/she is recording. Officers shall not willfully obstruct recording devices. Officers shall not harass, threaten, or intimidate, or try to discourage a bystander from recording any enforcement action.

In the event that a bystander holds evidence of a crime needed for a criminal investigation or prosecution, and voluntary consent or cooperation to provide the evidence is not provided, a search warrant can be obtained and the recording device seized, and upon retrieving the evidence the recording device shall be returned to the owner in a timely manner.

VI. COMPLAINTS OF RACIAL / ETHNIC PROFILING

- A. Any person may file a complaint with the department if they feel they have been stopped or searched based on racial, ethnic or gender-based profiling, and no person shall be discouraged, intimidated or coerced from filing such a complaint or discriminated against because they have filed such a complaint.
- B. Any officer contacted by a person who wishes to file such a complaint shall comply with existing policy on citizen complaints.
- C. The Office of Professional Standards supervisor receiving such a report for investigation shall notify the complainant in writing that an investigation is underway and they will be notified by mail at the time the matter is concluded. In addition, a statement outlining personnel privacy protections will be included in the follow-up letter.
- D. On an annual basis, the department shall compile a statistical summary of all profiling complaints for the year including the findings as to whether they were sustained, not sustained or exonerated. This statistical information is available under state FOI laws if revised.
- E. Supervisors shall review profiling complaints, periodically review a random sampling of BWC video as outlined in Administrative Regulation and Operating Procedure #271, review reports filed on stops by officers, and respond at random to back up officers on vehicle stops. Supervisors shall take appropriate action whenever it appears that this policy is being violated, being particularly alert to any pattern or practice of possible discriminatory treatment by individual officers or squads.
- F. The Records Section shall inform the Commanding Officer of the departmental unit with responsibility over patrol what data is available on the race of persons

stopped, and after consultation with this Commander, produce periodic reports on traffic or pedestrian stops by race and gender if requested.

VII. COMPLIANCE

Violation of this procedure shall result in discipline, retraining, counseling or other remedial intervention as appropriate to the violation. Supervisors shall ensure that all personnel in their command are familiar with the content of the procedure and will be alert and respond to indications that biased policing is occurring.